

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PAUL SCOTT ARMSTRONG

CASE NO. C13-2240 RSM

Petitioner,

**ORDER DENYING§ 2255 MOTION
(CR12-186 RSM)**

V.

UNITED STATES OF AMERICA

Respondent.

Federal prisoner Paul Scott Armstrong has filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Dkt. # 1. For the reasons that follow, Petitioner's 28 U.S.C. § 2255 motion shall be denied.

Petitioner entered a guilty plea to possession of child pornography, in violation of 18 U.S.C. 2252(a)(4)(B) and (b)(2), in the underlying criminal matter pursuant to Fed. R. Cr. P. 11(c)(1)(C). *United States v. Armstrong*, Case No. 12-cr-186-RSM, Dkt. # 31. In this §2255 motion, he contends that the government failed to disclose exculpatory evidence to the United States Magistrate Judge before obtaining a search warrant in violation of his Fourth Amendment

1 rights. *See* Dkt. # 1. However, as part of the plea agreement, Petitioner waived “any right to
2 bring a collateral attack against the conviction and sentence, including any restitution order
3 imposed, except as it may relate to the effectiveness of legal representation.”¹ *Armstrong*, Case
4 No. 12-cr-186-RSM, Dkt. # 31, pp. 8-9. Generally, a movant may not collaterally attack the
5 sentence if he enters a voluntary and intelligent guilty plea upon the advice of competent
6 counsel. *See United States v. Broce*, 488 U.S. 563, 574 (1989). The movant may raise claims
7 regarding whether the guilty plea was voluntary and intelligent or whether counsel was
8 ineffective in advising movant to enter a plea. *See id.* at 569.

9 Petitioner’s motion does not raise claims regarding whether the guilty plea was voluntary
10 and intelligent, nor does it raise claims for ineffective assistance of counsel. Instead, Petitioner
11 seeks to raise a Fourth Amendment exclusionary violation. Such claims are subject to the plea
12 agreement waiver, which forecloses Petitioner from seeking collateral relief from his conviction
13 or sentence. *See United States v. Abarca*, 985 F.2d 1012, 1014 (9th Cir. 1993) (holding
14 defendant may waive right to seek collateral relief). In addition, such claims cannot be raised on
15 collateral review. *See Stone v. Powell*, 428 U.S. 465, 486–89 (1976) (discussing that
16 exclusionary rule exists to deter Fourth Amendment violations by law enforcement; thus, it is a
17 “judicially created remedy rather than a personal constitutional right”); *see also United States v.*
18 *Hearst*, 638 F.2d 1190, 1196 (9th Cir. 1980) (holding collateral review of Fourth Amendment
19 violation barred where government provided full and fair opportunity to litigate claim).
20 Accordingly, Petitioner’s 28 U.S.C. §2255 motion shall be DENIED.

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22 ¹ Waiver was conditioned upon receiving a sentence within or below the applicable
23 sentencing guidelines range. Mr. Armstrong’s advisory guideline range was calculated at 97-121
24 months. The Court imposed a 48-month custodial sentence, which was well below the guideline
range. *Armstrong*, Case No. 12-cr-186-RSM, Dkt. # 42.

1 **Certificate of Appealability**

2 An appeal of this Order may not be taken unless this Court or a Circuit Judge issues a
3 certificate of appealability, finding that “the applicant has made a substantial showing of the
4 denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requires that “reasonable jurists
5 would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack*
6 *v. McDaniel*, 529 U.S. 473, 484 (2000). If the district court dismisses the petition on procedural
7 grounds, it must determine whether the petition states a valid claim for the denial of a
8 constitutional right and that reasonable jurists would find the procedural ruling correct. *Id.* at
9 474. The Court concludes that a certificate of appealability should not issue because Petitioner
10 has failed to make a substantial showing that he was denied a constitutional right, and that jurists
11 of reason would not find it debatable whether the Court was correct in any procedural or
12 substantive ruling.

13 Therefore, it is hereby ORDERED:

14 (1) Petitioner’s Motion to Vacate, Set Aside, Correct, or Correct the Sentence (Dkt. # 1)
15 shall be DENIED;
16 (2) No Certificate of Appealability shall be issued.

17 Dated this 29 day of January 2014.

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RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE